

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 05-CV-00329-GKF(PJC)
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

**STATE OF OKLAHOMA'S REPLY IN FURTHER SUPPORT OF ITS MOTION  
IN LIMINE TO PRECLUDE DEFENDANTS FROM REFERRING TO THIS  
ACTION AS ANYTHING OTHER THAN "THE STATE'S" LAWSUIT [DKT #2406]**

Plaintiff, the State of Oklahoma ("the State"), respectfully submits this reply in further support of its "Motion *in Limine* to Preclude Defendants from Referring To This Action as Anything Other Than 'the State's' Lawsuit." [DKT #2406]

The State has sought an order precluding Defendants from referring to this action as anything other than "the State's" lawsuit. Specifically, the State has sought an order precluding Defendants from: (1) referring to this lawsuit as "the Attorney General's lawsuit," "General Edmondson's lawsuit," or any similar phrases; and (2) referring to the party plaintiff to this lawsuit as anything other than "the State" or "Plaintiff." Defendants oppose the State's Motion, attempting to assign significance to the fact that it was the Attorney General who filed this lawsuit on behalf of the State. *See, e.g.*, Response, p. 8 ("That this lawsuit originated in the attorney general's office . . . is and has always been, an important aspect of the Poultry Defendants' defense"). This is improper as a matter of law, and therefore the State's Motion must be granted.

This is the State's lawsuit. The State is the sole plaintiff in this lawsuit. The Attorney General is not a party plaintiff in this lawsuit.<sup>1</sup> See 74 Okla. Stat. § 18b(A)(1)-(3); *see also, e.g., United States v. Northside Realty Assocs., Inc.*, 324 F. Supp. 287, 291 (N.D. Ga. 1971); *State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 514 P.2d 40, 43 (N.M. 1973). Rather, the Attorney General is the State's lawyer. See 74 Okla. Stat. § 18b(A)(1)-(3).

The Oklahoma Legislature has specifically charged the Attorney General with the duty "[t]o initiate or appear in any action in which the interests of the state or the people of the state are at issue[.]" See 74 Okla. Stat. § 18b(A)(3). Further, the Oklahoma Legislature has specifically assigns the Attorney General the duty "[t]o appear for the state and prosecute . . . all actions and proceedings in any of the federal courts in which the state is interested as a party." See 74 Okla. Stat. § 18b(A)(2). The Oklahoma Legislature's rationale for centralizing the State's litigation responsibilities with the Attorney General is not at all difficult to discern. As explained in the federal context, "[t]he Supreme Court has recognized that the main purposes of centralizing litigation responsibility in the Justice Department is to assure that the United States should speak with one voice 'that reflects not the parochial interests of a particular agency, but the common interests of the Government and therefore of all the people.'" *Town of Norfolk & Town of Walpole v. United States Army Corps of Engineers*, 968 F.2d 1438, 1459 (1st Cir. 1992) (citing *United States v. Providence Journal Co.*, 485 U.S. 693 (1988)).

Defendants have cited no legal authority supporting the proposition that this case is anything other than the State's case. To characterize this case as "the attorney general's lawsuit" is legally incorrect. And to characterize this case as "the lawsuit brought by the attorney

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<sup>1</sup> Despite the fact that this Court has already ruled that "[t]he state, not the Attorney General is the real party in interest and is the Plaintiff in this action, *see* DKT #1062, pp. 2-3, Defendants continue to ignore this order and persist in referring to the State in this action as "Plaintiffs" rather than "Plaintiff." *See, e.g.,* Response, p. 3.

general," "the lawsuit filed by the attorney general" or any other similar phrase is an improper attempt to personalize a case brought on behalf of the State. Such references would be irrelevant, unduly prejudicial and confusing and should be excluded under Fed. R. Evid. 401, 402 and / or 403. This is the State's lawsuit, and it should be referred to as such and in no other manner. To the extent they believe that a state employee has a view that conflicts with the State's theory of the case, Defendants are free to attempt to elicit that testimony at trial.<sup>2</sup> But in eliciting such testimony, Defendants cannot argue or otherwise attempt to suggest that this is anything other than the State's case.

### Conclusion

The State's motion in limine for an order precluding Defendants from referring to this action as anything other than the State's lawsuit should be granted.

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<sup>2</sup> Through selective use of quotations, Defendants seek to create the impression that various state officials do not support this lawsuit. *See, e.g.*, Response, p. 7 ("These details support the idea that Mr. Edmondson initiated this lawsuit without the full support of relevant Oklahoma agencies and officials"). Not only is it legally irrelevant, *see supra*, but also such argument is factually inaccurate. For example, Steve Thompson, executive director of ODEQ, testified not only that "[i]n the time frame that the lawsuit was filed, we met with the governor, and we agreed that this was the State of Oklahoma's lawsuit," but also that "the governor advised the agencies that he was in full concurrence with the suit, and that as agencies of state government, we would be expected to be a part of that suit." *See* Ex. 1 (4/7/09 S. Thompson Depo., pp. 12 & 14). Likewise, Terry Peach, Secretary of Agriculture, testified not only that "the state of Oklahoma" is the plaintiff in this lawsuit, but also that if it were up to him there would be a lawsuit between the State and Defendants. *See* Ex. 2 (4/10/09 T. Peach Depo., pp. 101-102) ("Yes, there might be [a lawsuit] because we need to make sure that all the laws are followed in the state of Oklahoma"). Through similar selective use of deposition quotations in their Response, Defendants also attempt to create the impression that Oklahoma agencies responsible for promulgating and enforcing regulations regarding the use of poultry waste and its effects on the environment and for ensuring the public health and safety do not view poultry litter as a substance harmful to the environment or human health. As will be shown at trial, that is not the case.

Respectfully Submitted,

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